

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 18-cv-710-jdp

JERIME J. BORST, DIANE M. BORST,
WESTERN WISCONSIN NUTRITION,
LLC, BINKOWSKI OIL, LLC, PIERCE
VETERINARY CLINIC, INC., DEERE &
COMPANY, THE COOPERATIVE
FINANCE ASSOCIATION, INC., PHI
FINANCIAL SERVICES, INC., and
BANK OF AMERICA, N.A.

Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-captioned matter having come before the Court to be heard, Honorable James D. Peterson, United States District Judge for the Western District of Wisconsin, presiding without a jury, on April 23, 2019, the Plaintiff, United States of America, having appeared by its attorney, the Office of the United States Attorney for the Western District of Wisconsin, and no appearance having been made on behalf of the Defendants herein, except as may be noted on the record; the Clerk of the United States District Court for the Western District of Wisconsin having duly entered the default of Defendants Jerime J. Borst, Diane M. Borst, Western Wisconsin Nutrition, LLC, Binkowski Oil, LLC, Pierce Veterinary Clinic, Inc., Deere & Company, The

Cooperative Finance Association, Inc., Phi Financial Services, Inc., and Bank of America, N.A.; and the United States having filed a Notice of Application for Default and Motion for Default Judgment, with accompanying Declarations; and it further appearing that due notice of application and motion for judgment has been made to the Defendants, and the Court having heard the matter, therefore makes and files the following findings of fact and conclusions of law constituting its decision in this action.

FINDINGS OF FACT

1. The allegations set forth in the United States' complaint are accepted as true.

2. There is now due and unpaid on all Notes and Mortgages held by the United States as of April 23, 2019, the sums set forth in Attachment A.

3. The United States has incurred the following costs in this action: *See* Attachment A.

4. The remaining chattel secured by the promissory notes and security agreements held by the United States is described in Attachment B attached hereto.

5. No other proceedings have been held at law or otherwise for the recovery of the sum secured by the promissory notes, security agreements, continuation statements, financing statements, and mortgages.

6. The mortgaged premises are described as follows:

That certain parcel of land located in the NW1/4 of the SW1/4 and the NE1/4 of the SW1/4 of Section 5, Township 25 North, Range 17 West, Town of Hartland, Pierce County, Wisconsin, more fully described as follows: Commencing at the West Quarter corner of said Section 5; thence N89°38'14"E 393.18 feet on the East/West Quarter line of said Section 5, to

the point of beginning, of the parcel to be herein described; thence N89°38'14"E 932.92 feet on said line; thence S01°20'48"W 492.94 feet on the East line of said NW1/4 of the SW1/4; thence N89°38'14"E 445.02 feet on the South line of the North 15 acres of said NE1/4 of the SW1/4; thence S03°04'57"W 429.93 feet; thence N88°48'54"W 540.76 feet; thence N86°17'06"W 544.20 feet; thence S06°20'46"E 297.20 feet; thence S88°22'00"W 713.63 feet; thence N01°21'00"E (assumed bearing on the West line of the SW1/4 of said Section 5, recorded as North) a distance of 276.11 feet; thence N89°38'14"E 393.18 feet; thence N01°21'00"E 904.40 feet to the point of beginning.

Subject to 690th Street right of way.

Pierce County, Wisconsin.

Tax ID.: 012-01011-0900

7. The real estate is so situated that it cannot be sold in parcels without injury to the interest of the parties, and a sale of the whole will be more beneficial to the parties hereto.

8. Notice of the pendency of this action was duly given on August 31, 2018, after the filing of the Complaint herein, by filing a Notice of Lis Pendens in the office of the Register of Deeds for Pierce County, Wisconsin. This was done in the manner and form required by law, after the filing of the complaint herein, and more than twenty (20) days prior to the trial or other resolution of this action.

9. The Defendants have not served an Answer or other response and the Clerk of Court has duly entered the default of said Defendants.

10. The United States is entitled to immediate possession of the items of security on which the Farm Service Agency has a security interest, set out in the Complaint on file herein, as listed in Attachment B.

CONCLUSIONS OF LAW

11. The United States is entitled to judgment of foreclosure and sale of the mortgaged premises and secured chattel in the usual form as requested in the United States' Complaint, and in accordance with the above Findings of Fact.

12. The United States is entitled to recover from the Defendants the following sum: *See Attachment A.*

13. The United States is entitled to immediate possession of the items of security on which the Farm Service Agency has a security interest, set out in the Complaint on file herein, as listed in Attachment B.

14. The items of security may be sold individually or as a whole at a public or private sale, and the sale shall be conducted by or under the direction of the United States Marshal for the Western District of Wisconsin or the United States Department of Agriculture's Farm Service Agency.

15. That if necessary to secure possession of the chattel and premises, the Clerk of Court, upon application by the United States, shall issue a Writ of Assistance.

16. The Defendants and all persons claiming under them subsequent to the filing of the notice of the pendency of this action be and hereby are forever barred and foreclosed of all right, title, interest, claim and equity of redemption in the chattel and mortgaged premises.

17. The mortgaged premises shall be sold as a whole.

18. The Defendants shall not be granted a right of redemption.

19. Sale of the premises shall be conducted by or under the direction of the United States Marshal for the Western District of Wisconsin. Notice of the sale shall be made by publication in the Pierce County Herald, a newspaper published in Pierce County, Wisconsin.

20. Proceeds from the sale of the subject premises shall be paid first to satisfy Defendant Jerime J. Borst and Diane M. Borst's debt to the United States as set forth in Attachment A, plus necessary costs and disbursements.

21. Any remaining proceeds from the sale of the subject premises shall be subject to further order of the Court.

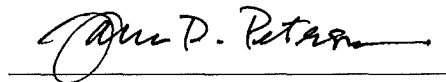
22. Deficiency judgment is not being sought in this action.

Now, on application of Plaintiff United States of America,

IT IS THEREFORE ORDERED that foreclosure of said mortgages and security agreements in the usual form as provided by and in accordance with the above Findings of Fact and Conclusions of Law be entered in this action.

Dated this 23RD day of APRIL, 2019.

BY THE COURT:



JAMES D. PETERSON
United States District Judge

United States v. Jerime J. Borst, et al.

Case No. 18-cv-710-jdp

ATTACHMENT A

Notes and Mortgages

a.	Principal as of April 23, 2019	\$357,884.78
b.	Interest as of April 23, 2019	<u>\$ 16,650.67</u>
	Total as of April 23, 2019	<u>\$374,535.45</u>

Costs and Disbursements

c.	Filing of Notice of Lis Pendens	\$ 35.00
d.	United States Marshal Fees	<u>\$ 1,069.64</u>
	Total Costs & Disbursements	<u>\$ 1,104.64</u>

TOTAL AS OF APRIL 23, 2019	<u>\$375,640.09</u>
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SUBSTITUTE ATTACHMENT B
UNITED STATES OF AMERICA V. JERIME J. BORST, ET AL.
Case Number 18-cv-710-jdp

LIST OF ITEMS OF SECURITY

- A. All crops, annual and perennial, and other plant or farm products now planted, growing or grown, or harvested or which were planted by Defendants Jerime J. Borst and/or Diane M. Borst in Pierce County, Wisconsin, after the Security Agreement was executed on November 24, 2015, or otherwise become growing or harvested crops or other plant products (1) within the one-year period or any longer period of years permissible under State law, or (2) at any time after the Security Agreement was executed on November 24, 2015, if no fixed maximum period is prescribed by State law, including crops and plant products now planted, to be planted or harvested by Defendants Jerime J. Borst and/or Diane M. Borst in Pierce County, Wisconsin.
- B. All farm and other equipment (except small tools and small equipment such as hand tools, power lawn mowers and other items of like type unless described below), and inventory, now owned or hereafter acquired by Defendants Jerime J. Borst and/or Diane M. Borst, together with all replacements, substitutions, additions, and accessions thereto, including but not limited to the following:

ITEM NO.	QTY	DESCRIPTION	MANUFACTURER	SIZE AND TYPE	SERIAL OR MODEL NO.
1	1	Tractor with Duals	IHC	1066 WF	009138
2	1	Tractor with Duals	IHC	1206 WF	10593 S-Y
3	1	Tractor	John Deere	4020 WF	149844 R
4	1	Tractor	IHC	M/NF & power steer	233614
5	1	Loader	John Deere	720	
6	1	Skid Steer	N.H.	LX665-turbo	69034
7	1	Tractor	JD	4450 cab & air	004278
8	1	TMR	Patz	V420 LP HD	V74201166JN

9	1	Tractor	JD	4410 cab & air	038639
10	1	Tractor	JD	4440	038639
11	1	Chopper box/gear	Meyer	516 AL tandem	895428
12	2	Chopper box/gear	H&S/Knpwis tandem	501 14' & 7+4 16'	09339
13	1	Discbine	JD	946 MOCO	173591
14	1	Chopper w/heads	NH	890	237893
15	2	Hay Rack	Minnesota H&S	8x16'	
16	1	Chopper w/hds	JD	3970	985354
17	1	Baler	JD	328 #40 thrower	767267
18	1	Hay Rack	GMCI	8x16	
19	1	Meger	Miller Pro	7914	
20	1	Elevator	Loyal	60 ft. (Hay)	
21	1	Fertilizer Auger	Hydra Fold	6" x 16' all hydraulic	
22	1	Spreader	H&S	310	006849
23	1	Feed Cart	Agrimetel	525/Honda 5.5	
24	2	Feeder Wagon	H&S	310	006849
25	1	Cattle Trailer	Bumper Hitch	16'	
26	1	Conveyer	Loyal	24'	
27	1	Auger	Fertel	10x76	
28	1	Transfer Auger	Westfield	10x16	
29	1	Trailer	PJ	25' Tandem Gooseneck	
30	1	Feed Mill	Artsway	PM30	
31	1	Manure Spreader	NH	185	
32	2	Vacuum Pump	Universal/DeLaval	7.5/5 Hp	
33	7	Milker Units	DeLaval		
34	1	Receiver & Washer	DeLaval/Bender		
35	60	Panels and Gates	12-16'		
36	2	Bale Spear	Verlin LL		
37	5	Round Bale Feeder	Dura Built/Sioux		
38	2	Poly Bins	Ploy Dome	4.5 ton/auger	

39	2	1 HP Motor		1 HP	
40	1	Semen Tank	Breeding Kit		
41	1	4-Wheeler	Bombardier	800 4x4 Outlander	
42	1	Bedding Chopper	DC Atlas	Honda Motor	
43	3	Skid Steer Bucket		72" and 60"	
44	1	Grappel Fork	Skitsteer		
45	1	Pallet Fork	Skitsteer		
46	2	Round Bale Wagons		8 Bale	
47	2	Fuel Barrels	300 Gallon	1 electric pump	
48	2	Barn Fans		48"	
49	1	Barn Cleaner	Chute & Chain		